



# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, DSc, P.E., Chair



Arnold  
Schwarzenegger  
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## Sacramento Main Office

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Linda S. Adams  
Secretary for  
Environmental Protection

22 February 2007

Mr. John Donlevy, City Manager  
City of Winters  
318 First Street  
Winters, CA 95694

**CERTIFIED MAIL**  
**7005 1160 0004 0127 2978**

### **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2007-0502, CITY OF WINTERS, YOLO COUNTY**

Enclosed is Administrative Civil Liability (ACL) Complaint No. R5-2007-0502, which is issued to the City of Winters (hereafter referred to as "Discharger") for violation of Waste Discharge Requirements (WDRs) Order No. R5-2002-0136. The ACL Complaint is issued pursuant to Section 13385 of the California Water Code and proposes that the Discharger pay \$70,000 in administrative civil liability.

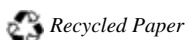
A hearing on this matter will be scheduled for **3/4 May 2007**, in Rancho Cordova, California, in accordance with section 13323 of the California Water Code, unless the Discharger agrees to waive the hearing and pay the proposed civil liability in full. Specific notice about this hearing and its procedures will be provided under separate cover.

The Discharger may agree to pay the civil liability and waive a Regional Water Board hearing on the matter. To waive a hearing, a duly authorized person must sign the enclosed waiver and remit both the waiver and a \$70,000 check, made payable to the *State Water Pollution Cleanup and Abatement Account*, to this office by **25 March 2007**. Any resulting settlement of this ACL Complaint will not become final until after a 30-day public comment period, commencing from the date reflected on the enclosed Complaint. Additionally, the Executive Officer may decide to schedule the Complaint for a hearing consistent with California Water Code Section 13323(b).

To claim an inability to pay this Administrative Civil Liability Complaint, the Discharger must submit a statement of financial conditions by **25 March 2007** that substantiates its claim. Likewise, if the Discharger disagrees with any findings in the Complaint, written comments must be received by **25 March 2007**.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Mark List, by **25 March 2007** in order for us to give them full consideration prior to the **3/4 May 2007** meeting of the Regional Water Board. Written

**California Environmental Protection Agency**



comments must describe any disagreements with the findings in the Complaint. Comments submitted after **25 March 2007** may not be accepted.

In order to conserve resources, paper copies of the referenced documents may not accompany this letter. Interested persons may download the documents from the Regional Water Board's Internet website at <http://www.waterboards.ca.gov/centralvalley/tentative/index.html>. Copies of these documents can also be obtained by contacting or visiting the Regional Water Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114, weekdays between 8:00 a.m. and 5:00 p.m.

For your information, we have attached a description of the factors that were considered, pursuant to California Water Code Section 13385(e), in assessing this civil liability.

If you have any questions, please contact Mark List at (916) 464-4732 or Anne Olson at (916) 464-4740.

PAMELA C. CREEDON  
Executive Officer

Enc: Administrative Civil Liability Complaint No. R5-2007-0502  
Factors Considered in Assessing Liability

cc w/enc: Regional Water Board Members

cc w/o enc: Michele M. DeCristoforo, Office of Chief Counsel, SWRCB, Sacramento  
Mark Bradley, Enforcement Unit, SWRCB, Sacramento  
Wayne Taniguchi, Yolo Co. Environmental Health Department, Woodland  
Karen Honer, ECO Resources, Inc., Winters

## **Factors Considered in Assessing Liability**

### **Nature and Circumstances**

The Discharger has violated Discharge Prohibitions A.1, A.2, and A.6 of WDRs Order No. R5-2002-0136 by discharging raw sewage to Putah Creek during four separate sanitary sewer overflows. In the case of the first spill, the circumstances are such that the spill could have been avoided if the Discharger had exercised due care in spill response/cleanup. In the case of the two smaller spills, the circumstances are such that the spills could have been avoided if the Discharger had heeded the contract operator's recommendations to retrofit the lift stations with modern failsafe and backup power systems. In the case of the 43,000-gallon spill, the circumstances are such that the spill could have avoided if the Discharger's contract operator had exercised due care in lift station maintenance.

### **Gravity**

The Discharger failed to prevent the discharges of raw sewage to Putah Creek, which has a high level of beneficial uses including domestic water supply and recreation. Potential health risks from bacteria and viruses resulting from raw sewage are a concern for humans and wildlife habitat.

### **Toxicity**

There were no reported fish kills subsequent to the spills, and Putah Creek would be expected to provide some dilution. For two of the spills, the Yolo County Environmental Health Department required that the creek be posted with health warning signs for several days due to elevated total and fecal coliform levels. Therefore, the degree of toxicity from the discharge appears to be moderate.

### **Susceptibility of the Discharge to Cleanup**

Due to the circumstances of the spills, once the sewage entered Putah Creek there was no practical way to clean up to avoid water quality impacts or impacts to beneficial uses.

### **Ability of the Discharger to Pay**

Staff is not aware of any reason why the Discharger is unable to pay the liability.

### **Voluntary Cleanup Efforts**

With the exception of the August 2005 spill, the Discharger's response and cleanup efforts have been adequate, and reasonable efforts were made to minimize the volume spilled to surface waters. The Discharger has cooperated with staff and the county to monitor impacts to surface water quality and to post public health warnings when requested.

### **Prior History of Violations**

Since adoption of the WDRs in 2002, the Discharger has received two Notices of Violation (NOVs) and a Cease and Desist Order (adopted in January 2007). The first NOV, issued on 27 September 2005, cited the Discharger for the August 2005 spill and failure to prepare and implement an adequate *Sanitary Sewer System Operation, Maintenance, Overflow Prevention, and Response Plan*, as well as numerous other violations (which are not cited in the ACLC). The second NOV, also issued on

27 September 2005, cited violations of the WDRs discovered during a facility inspection.

**Degree of Culpability**

The Discharger was aware of the prohibition against discharges to surface waters. Despite recommendations from its operator and Regional Water Board staff, the Discharger did not act in a timely and proactive fashion to install modern fail-safe systems in its lift stations. Such protections (which include back-up power supplies, autodialers, and audible alarms) are not particularly costly and are in wide use in communities the size of Winters.

**Economic Benefit**

The two larger spills, which account for over 90 percent of the volume discharged to Putah Creek, were the result of human error (in the first case) and negligence (in the second case). The Discharger did not reap any economic advantage in either case. However, the two smaller spills (as well as another spill that did not reach surface waters) could have been avoided if the Discharger had retrofitted its three sewer lift stations to provide autodialers, backup generators, and electrical systems to automatically start the backup generators.

In general, these are not costly improvements, and it is estimated that the improvements described above would cost approximately \$60,000. If the Discharger had borrowed \$60,000 at 7% for five years in early 2005 to complete the improvements before the first spill, the Discharger would have spent approximately \$7,000 to service the debt between January 2005 and January 2007.